

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 28 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0257-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
STEVEN ALLEN BRUNI,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-2082

Honorable Virginia C. Kelly, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Steven Allen Bruni

Tucson
In Propria Persona

B R A M M E R, Judge.

¶1 In this petition for review, petitioner Steven Bruni challenges the trial court's denial of the latest petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless we find the trial court clearly abused its discretion. *State v. Mata*, 185 Ariz. 319, 331, 916 P.2d 1035, 1047 (1996).

¶2 In August 1980, a jury found Bruni guilty of fourteen felonies: three counts of kidnapping, six counts of sexual assault, one count of sexual abuse, two counts of aggravated assault, and two counts of attempted sexual assault. The charges arose from Bruni's assaults upon three separate victims on different dates in October 1979. He was sentenced to a combination of concurrent and consecutive prison terms totaling fifty-six years. This court upheld his convictions on appeal and affirmed all but two of his sentences. *State v. Bruni*, 129 Ariz. 312, 630 P.2d 1044 (App. 1981). His subsequent resentencing on those two counts in October 1981 did not reduce the total amount of time Bruni will spend in prison.

¶3 Bruni filed a pro se notice of appeal following his resentencing and, in January 1982, the trial court appointed new counsel to represent him in connection with the appeal and his first petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In February 1982, Bruni's appeal was stayed pending the outcome of his application for post-conviction relief. The trial court denied post-conviction relief and subsequently denied Bruni's motion for reconsideration of that ruling. After this court vacated the order staying Bruni's appeal from his resentencing, we consolidated that appeal with Bruni's petition for

review of the trial court's denial of post-conviction relief. Our memorandum decision, affirming the sentences reimposed on two of the fourteen counts of conviction and upholding the denial of post-conviction relief, was filed on September 6, 1983. *State v. Bruni*, Nos. 2 CA-CR 2523-2, 2 CA-CR 2993-3PR (memorandum decision filed Sept. 6, 1983).

¶4 In May 1995, Bruni filed his second notice of post-conviction relief pursuant to Rule 32. In the notice, Bruni stated he intended to assert his first claim of ineffective assistance of counsel and asked the court to appoint counsel for that purpose. Nothing further transpired in connection with Bruni's second notice, and he filed his third in November 1996, again asking the court to appoint counsel and indicating on the printed form of notice his intention to raise a first claim of ineffective assistance of counsel as well as other, plainly precluded claims. Again nothing more transpired in response to Bruni's notice.

¶5 The process was repeated again in March 1997, when Bruni wrote a letter of inquiry to the clerk of the court, accompanied by his fourth notice of post-conviction relief and a lengthy supporting memorandum, which the parties and the court all treated as Bruni's second petition for post-conviction relief. In his memorandum to that petition, he asserted that trial and appellate counsel had rendered ineffective assistance. The trial court summarily denied relief in June 1997, finding all of Bruni's claims precluded under Rule 32.2 as having previously been either raised or waived by his failure to raise them. Bruni

moved for reconsideration, and the court denied the motion. Bruni did not seek review of the trial court's decisions.

¶6 In April 2008, Bruni initiated the current proceeding by filing his fifth notice pursuant to Rule 32 together with his third petition for post-conviction relief, in which he again alleged ineffective assistance by trial, appellate, and Rule 32 counsel. The trial court reviewed the history of Bruni's various post-conviction proceedings in a minute entry filed on May 20, 2008, before summarily dismissing the latest "petition." The court correctly observed that Bruni has no constitutional right to the effective assistance of counsel in post-conviction proceedings, *see Mata*, 185 Ariz. at 336-37, 916 P.2d at 1052-53, and ruled Bruni's other claims of ineffective assistance by trial and appellate counsel now precluded. *See Ariz. R. Crim. P. 32.2(a)(2), (3).*

¶7 Relying on *State v. Bennett*, 213 Ariz. 562, 146 P.3d 63 (2006), and *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002), Bruni contends on review that the trial court abused its discretion in ruling his latest claims precluded. Citing *Smith*, he contends his ineffective assistance claims are of sufficient constitutional magnitude that they could only be waived personally, by means of an informed, knowing, and voluntary waiver, which he did not do. Bruni's contention is answered, however, by our decision in *State v. Swoopes*, 216 Ariz. 390, 166 P.3d 945 (App. 2007). There, the defendant similarly asserted, in a successive post-conviction proceeding, that his ineffective assistance claim was not precluded because "he [ha]d not knowingly, intelligently, voluntarily waive[d] his right to

effective appellate counsel and the rights counsel failed to protect.” *Id.* ¶ 20. As we held in *Swoopes*:

[W]hen “ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”

. . . .

... [S]uccessive [ineffective assistance of counsel] claims “will be deemed waived and precluded” not only when they previously were raised, but also when they “could have been raised” in a prior Rule 32 proceeding.

Id. ¶¶ 23, 25, quoting *State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (emphasis omitted).

¶8 We conclude the trial court correctly found Bruni’s claims precluded. Consequently, although we grant the petition for review, we find no abuse of the court’s discretion and thus deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge